

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 18-CR-192 (WFK)
Plaintiff, :
-against- : United States Courthouse
KASSIN RIVERS, : Brooklyn, New York
Defendant. : Tuesday, July 27, 2021
: 2:00 p.m.
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TRANSCRIPT OF CRIMINAL CAUSE FOR A STATUS CONFERENCE
BEFORE THE HONORABLE WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: JACQUELYN M. KASULIS, ESQ.
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Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
BY: JONATHAN B. ALGOR, IV, ESQ.
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For the Defendant: CARDI & EDGAR LLP
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P R O C E E D I N G S

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(In open court.)

THE COURTROOM DEPUTY: Criminal cause for a status conference, Docket Number 18-CR-00192, *United States of America versus Kassin Rivers*.

Would each counsel please identify themselves and state the names of their representative clients for the record, beginning with the Government.

MR. ALGOR: Good afternoon, Your Honor. Jonathan Algor for the United States, J-O-N-A-T-H-A-N, A-L-G-O-R.

THE COURT: Good afternoon, Mr. Algor.

Are you fully vacc'd?

MR. ALGOR: Yes, I am, Your Honor.

THE COURT: You may remove your mask.

MR. ALGOR: Thank you, Your Honor.

MS. CARDI: Good afternoon, Your Honor. Dawn Cardi for Kassin Rivers, and I am fully vacc'd.

THE COURT: You may remove your mask.

MS. CARDI: Thank you, Your Honor.

THE COURT: Thank you. Please be seated.

MS. CARDI: Thank you, Your Honor.

THE COURT: We are here today for a status conference in the action *United States of America versus Kassin Rivers*, 18-CR-192. We are here at the request of

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1 Defense Counsel.

2 This Court entered an order on July 26th of 2021,
3 which reads as following: The Court has reviewed
4 Defense Counsel's motions, see ECF Numbers 128, 129. The
5 Court hereby denies Defendant's Motion to Compel, ECF 128;
6 and grants Defendant's Motion for a Hearing, ECF Number 129.
7 The status conference will proceed on July 27th, 2021 at
8 2:00 p.m. in Courtroom 6H North in the United States
9 District Court for the Eastern District of New York,
10 225 Cadman Plaza East, Brooklyn, New York before the
11 Honorable William F. Kuntz, II, so honored by this court,
12 and as I stated dated July 26th of 2021.

13 The correspondence which gave raise to this was a
14 letter that the Court received Defense Counsel,
15 Distinguished Counsel Dawn M. Cardi, and has cc'd all
16 parties on July the 23rd late afternoon or evening and that
17 application read as follows:

18 "Dear Judge Kuntz: My client, Mr. Rivers, is over
19 60 years old and has multiple health issues previously
20 corroborated with his medical records from a prior bail
21 application. On July 15th I contacted the Bureau of
22 Prison's Legal Department to advise them, despite numerous
23 requests from my client, to provide him with hearing aids.
24 It has been six months, and sadly, he remains quite deaf and
25 has had no hearing aids provided. The response was the

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1 typical, 'we will look into it.'

2 To date, he has not received hearing aids. While
3 this is certainly serious and needs attention from the BOP,
4 I received a more urgent call from my client yesterday --
5 meaning July 23rd -- July 22nd, yesterday, advising me that
6 he has been without toilet facilities, and the officers have
7 refused to either have the toilet repaired and have refused
8 to take him to the toilet when necessary. I have included
9 the verbatim email to the MDC Legal Department I sent below.

10 Dear Sophia and Nicole:

11 We have heard nothing on the failure to provide my
12 client with hearing aids. Do you have an update? He has to
13 scream because he cannot hear, paren, (see email dated
14 July 15th), close paren. He tells me he cannot hear unless
15 people scream at him. This is unacceptable.

16 Today I received a call from my client, and he was
17 beside himself. His toilet has been, all caps, BROKEN for
18 three days, and there has been a lockdown and officers
19 refuse to help him by allowing him to use another toilet;
20 but even worse, have failed to repair the toilet. No one
21 will tell him when it will get repaired. He has nowhere to
22 use a toilet. Staff laugh at him when he asks for it to be
23 repaired. The staff refused to let him out to call me until
24 today.

25 He has nothing to do with the cause of the

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1 lockdown. It was a lockdown caused by activity from the top
2 tier of his unit, which was open at the time of the
3 incident. He advised me that this top tier is housing young
4 gang members. The lower tier was locked in at the time of
5 the incident so could not have been responsible. He is in
6 the lower tier. He advised me that the lower tier is
7 basically housing old men. He reported that despite it
8 being clear that the lower tier has nothing to do with the
9 incident, the staff came into his cell, destroyed his legal
10 and personal papers, threw his medicines all over the cell.

11 This toilet, initial capped -- all capped, MUST be
12 repaired immediately. All caps, PLEASE ADVISE ME BY
13 TOMORROW AS TO WHAT ACTION HAS BEEN TAKEN TO REPAIR THE
14 TOILET. If there is not response and repair, I will have to
15 file a motion tomorrow afternoon to the Judge.

16 As of 4:00 p.m. today, I have heard nothing from
17 the BOP, although I did hear from AUSA Jonathan Algor who
18 advised that he has made good-faith attempts to remedy this
19 urgent situation but has not had any success with BOP.

20 I am respectfully requesting that Your Honor so
21 order this letter ordering the BOP to address this
22 broken-toilet situation immediately and report back to
23 either counsel and AUSA Algor or the Court that it has
24 repaired the toilet and order that the BOP update Counsel or
25 the Court on the status of Mr. Rivers's hearing aid.

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1 I thank the Court for its attention to this
2 matter.

3 Respectfully submitted, Dawn M. Cardi.

4 Cc'd to all parties."

5 Counsel Cardi wrote on July 26th a request for
6 status conference. I had called Counsel Cardi on Friday and
7 said that in my experience, BOP did not pay much attention
8 any more than my cat pays attention to me with respect to
9 orders, and I was not going to start signing orders that I
10 knew were not going to be followed and that I could not
11 enforce, but that a status conference would be appropriate
12 if Mr. Algor was available.

13 So she wrote: "Your Honor, I write to request a
14 status conference in the above case for Tuesday, July 27th
15 at 2:00 p.m. AUSA Algor has advised he is available at that
16 time and date.

17 I am available at the Court's convenience should
18 the Court require any addition information.

19 Thank you. Respectfully submitted,
20 Dawn M. Cardi."

21 Counsel for the defendant, Counsel for the
22 Government, orders from this Court to the BOP, and I do not
23 mean just this judge, but you have got litigation as you
24 have seen with Judge Brodie, Chief Judge Brodie, and
25 Judge Kovner, and other judges going back over the last

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1 couple of years, including the great holiday blackout. I,
2 quite frankly, am disappointed that for whatever reason the
3 defendant is not here today, perhaps he's ill, perhaps he
4 just did not want to come to court, I do not really know; we
5 just got word within the last hour or two that he would not
6 be here. He is obviously in custody and declining to get on
7 the bus or could not get on the bus.

8 Here is my situation: The way we treat our
9 incarcerated individuals is a reflection of the
10 Criminal Justice System, of the Courts, of Prosecutors, of
11 the Government, and of Defense Counsel. This is a disgrace.
12 This is an ongoing disgrace. I know for a fact that the
13 elevator which resides on the far side of the door to my
14 right, your left, that is supposed to bring incarcerated
15 individuals from the holding cells in the lower part of the
16 courthouse up here has been broken for months. So you do
17 not want the Board of Judges writing the BOP. We cannot
18 even get our elevator fixed here in the courthouse. I know
19 it is not the judges who are holding wrenches and
20 screwdrivers, and goodness knows you would not want me to be
21 your handyman. I do not know what to say. It reflects so
22 poorly on all of us that we have a defendant incarcerated
23 who maintains that he does not have decent toilet
24 facilities.

25 What are we to do? What are we do? We have

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1 Distinguished Prosecution, we have Distinguished Defense
2 Counsel, we have an okay District Court Judge, what are we
3 to do? I am open to suggestions, but as I said, we cannot
4 even get our elevators fixed in a timely fashion. And now I
5 am getting reports about this kind of behavior that in the
6 real world outside of the prison system people bring
7 lawsuits. If you are in the projects where I grew up and
8 the super did not fix it, you could sue Housing Authority,
9 or you could bring in your own plumber and have the repairs
10 made and then send the bill. What are we supposed to do?

11 Mr. Algor, what are we supposed do?

12 Ms. Cardi, what are we supposed do?

13 MR. ALGOR: So, Your Honor, I don't disagree with
14 you on anything you've said regarding, you know, this is a
15 reflection on all of us regarding that. I completely agree
16 with you.

17 What I can tell you is that, you know, what I've
18 heard from MDC Legal regarding this issue, and I was told
19 this morning so obviously, you know, this is -- now we're
20 hearing and maybe -- maybe not necessarily a waste of your
21 time, Your Honor, but at least they have updated me as of
22 today, that they told me that the toilet was fixed on Friday
23 and that a plumber went there again today to check and make
24 sure it's working. So I can report that to Your Honor.

25 I don't think that solves the greater issue that

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1 you're raising or that I find out today.

2 THE COURT: Well, I am not a big-picture system's
3 person. I am a District Court Judge who believes in
4 conservative jurists and resolving the cases that come
5 before me with my limited Article III powers and purview.
6 So I am delighted if as a result of Attorney Cardi's letter
7 to me, copied to you, and my scheduling this status
8 conference I could get a toilet fixed. That to me is not a
9 waste of my time. You know, I will -- you know, little
10 steps, little feet, I will do that. And if I have to have a
11 hearing every day to get all of the toilets fixed and then
12 maybe the elevator here, too, I will do that.

13 It is ridiculous that it takes
14 Distinguished Defense Counsel, Distinguished Prosecutor, and
15 an okay Federal Judge to get a toilet fixed in 2021. It is
16 not right. It is a disgrace and reflects poorly on our
17 system that it takes this much time and effort to do
18 something that any decent penal system does, because it
19 reflects on us. And I do not care if the defendant is
20 Jack the Ripper, we treat people under our care with respect
21 and decency, because it reflects on the entirety of the
22 Criminal Justice System.

23 I have no problem with what Defense Counsel did
24 here. I applaud it. I have no problem with what
25 the Government did here. I applaud it. You did your job.

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1 And if I have to hold hearings or set status conferences, I
2 will do it on a comode-by-comode basis if that is what it
3 takes. I do not know if that will get my elevator fixed
4 here, but I will do it.

5 MR. ALGOR: Yes, Your Honor.

6 THE COURT: Defense Counsel, your observations?

7 MS. CARDI: Did BOP advise you as to when he's
8 getting his hearing aids?

9 MR. ALGOR: So may I?

10 THE COURT: Yes.

11 MR. ALGOR: Yes. Yes, Your Honor.

12 So the update regarding the hearing aids is that
13 he had an audiology appointment back in March, and he has
14 another one in November scheduled.

15 THE COURT: What about the hearing aids, though?
16 March was several months ago. November is several months
17 from now.

18 MR. ALGOR: Yes, Your Honor.

19 THE COURT: We are just talking hearing aids. Do
20 I have to have a hearing separately on the -- no pun
21 intended -- on the hearing aids to go along with the one on
22 the toilet? I will do it.

23 MR. ALGOR: Yes, Your Honor. I was focused on the
24 toilet today --

25 THE COURT: No, I appreciate that. I mean, I

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1 think probably -- I cannot speak for anyone else, but if I
2 had both issues, I think I would want the toilet one
3 resolved first and then the hearing, but...

4 MR. ALGOR: So that's the update, Your Honor, is
5 November.

6 And I will work with Defense Counsel. You know,
7 obviously, I learned about the hearing aid issue on Friday,
8 so...

9 THE COURT: Do I need to set a hearing, no pun
10 intended, for the hearing aid?

11 MS. CARDI: I think you do, Your Honor, because I
12 totally respect AUSA Algor, and I know that he has made
13 diligent efforts, not just in this case, but in other cases
14 to get the BOP to respond to the myriad of medical issues
15 that we as defense counsel raise.

16 THE COURT: All right. I tell you what. I have a
17 hearing, a status conference in a case on Friday for the
18 weekend, and it just so happens that, I think her name is
19 Ms. Van Dornum, who I understand knows something about
20 criminal defense?

21 MS. CARDI: She does, Your Honor.

22 THE COURT: Yeah, I think so. She is going to be
23 here.

24 What time is that, 3:00, 3:30?

25 THE COURTROOM DEPUTY: 3:30, Judge.

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1 THE COURT: 3:30. So why don't we schedule --

2 MS. CARDI: Well, Judge, I am going to be at a
3 funeral. Judge Sotomayor's mother died.

4 THE COURT: I know. I just got the word about it.
5 Is the funeral on Friday?

6 MS. CARDI: It's on Friday in Florida, and then
7 I'm away for two weeks. But I would be happy to ask
8 Ms. van Dornum to stand on my behalf, if possible?

9 THE COURT: Well, if that is something that would
10 be acceptable to you, and to you Mr. Algor in light of the
11 literally just got word of Justice Sotomayor's mother's
12 passing, if that is acceptable to the Government, to have
13 Ms. van Dornum deal with the issues, and if we can have,
14 perhaps, a waiver of the appearance of Mr. Rivers, in part
15 because of the elevator problem. Maybe I got the commode
16 fixed vicariously, maybe we can get the hearing aid
17 vicariously, but I suspect the elevator will take a little
18 longer. So why don't we schedule a conference?

19 Mr. Algor, are you available on Friday, 3:00,
20 3:30, 4:00, or are you away?

21 MR. ALGOR: I'm prepping a trial. I'll be here,
22 Your Honor.

23 THE COURT: All right. Why do we not then set
24 this for -- I guess we should probably do it before the
25 Haynesworth matter.

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1 So 3 o'clock on Friday, does that work for you or
2 would you prefer it at the end?

3 MR. ALGOR: Three o'clock works, Your Honor.

4 THE COURT: All right. Three o'clock.

5 And is that acceptable to you, Ms. Cardi?

6 MS. CARDI: Yes, Your Honor.

7 THE COURT: And you will confirm the waiver of the
8 appearance of your client so we do not have the marshals
9 trying to schlep him here on a Friday afternoon through
10 elevators that do not work, and he does not have his hearing
11 aids yet so he will not hear what is going on unless people
12 are shouting?

13 MS. CARDI: I'll do my best to get to the MDC ASAP
14 on that issue so he can waive.

15 THE COURT: All right.

16 MS. CARDI: I would, however, like to make a
17 record here, because I think it is important.

18 THE COURT: That is why we are doing this.

19 MS. CARDI: Yes, Your Honor.

20 I would like to first speak about Mr. Rivers. He
21 is a 60-year-old man. He has suffered a heart attack in
22 2005. He suffered a second cardiac event in MDC in 2019.
23 He has had open-heart surgery. He has blocked coronary
24 arteries. He has suffered from pulmonary hypertension. He
25 has high cholesterol, and he suffers from cardiac

1 arrhythmia. All of these have been corroborated medically
2 in a prior proceeding.

3 He has been requesting these hearing aids, he
4 tells me, for some six months. When he calls me and we
5 speak on the phone, he has to scream. He has said that
6 because he consistently puts in slips for various things,
7 that the staff are actually prejudiced against him as a
8 troublemaker. One of the things he raised, and it's
9 something that I want to raise with the Court, is that as
10 Judge Colleen McMahon has said about our prisons, that they
11 are described to her as worse than Colombian prisons; that
12 the MDC and the MCC are run by morons. I don't believe that
13 they're run by morons. I disagree with the judge. I
14 believe that they are run by evil people, because you have
15 every ability to make a decision in whatever job you have,
16 to do the best job you can do. And the fact that you can
17 excuse yourself for this horrific behavior, and we, we,
18 because we are in this together, as you said, allow it to
19 happen is hideous; and that the Second Circuit does not do
20 anything about it is hideous.

21 But it is more hideous because President Biden,
22 whom I respect; Kamala Harris, whom I respect;
23 Merrick Garland, whom I respect are all screaming about how
24 important Black Lives Matter, and how they really care about
25 the African-American and communities of color. Well, if

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1 they really cared about the African-American and communities
2 of color, then they would put their money where their mouth
3 is. And putting their money where their mouth is is taking
4 care of the individuals that we incriminate for way too
5 long, for crimes that have mandatory minimums that are
6 horrific. If they cared -- yes, I know it's not popular in
7 the Congress, but I don't care what the Congress thinks.
8 It's what they think and they say and the power that they
9 have. And I hope and wish that people who have influence on
10 these folks who are supposed to govern us will pay attention
11 and do something serious and penalize the Bureau of
12 Prisons's personnel for their behavior, for their attitude,
13 for their cavalier treatment of people as if they were dirt
14 off their heels. Don't get me wrong. I know it is a tough
15 job that they have, and I know that they have to deal with
16 very difficult inmates at times, but that is no excuse. It
17 is no excuse at all. And even those difficult inmates, as
18 you refer to possible Jack the Ripper, are entitled to
19 medical treatment.

20 I looked at my email. I have probably emailed the
21 legal department ten times in the last four weeks for ten
22 different defendants for medical treatment that they are
23 being denied, medicines that they were being denied. People
24 who have been hospitalized and the hospital recommendation
25 is that they be brought back for CAT scans or MRIs are

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1 ignored; people who are in pain, who are not given pain
2 medication and not a response. We'll look into it. We'll
3 look into it. They didn't even have the decency to send me
4 an email on Friday, if, in fact, they have repaired the
5 toilet. And frankly, I find their credibility often
6 questionable. And I wish that Mr. Rivers had come because I
7 would find out for sure if they actually fixed the toilet.

8 So me, if I were in your seat, I have a different
9 view of it. I hear what you're saying. I hear what the
10 Second Circuit says. I'm a more-grand person. I'm a
11 more-policy person. I would hold the BOP in contempt.
12 Every time they disobeyed one of your orders in this
13 courthouse, I would hold them in contempt. Let the
14 Second Circuit reverse it. So be it. That is their job.
15 This is my job.

16 I really wish that everyone in this -- every
17 judge -- because you do have more power than I do.
18 Mr. Algor from the Assistant United States Attorney's Office
19 has more power than I do. And certainly, I have more power
20 than Mr. Rivers. And he thinks and told me that I'm not
21 doing anything for him. He thinks I'm paid by the
22 Government, so I am just another part of the cog in the
23 wheel. And after 40 years of doing this, I wish that
24 weren't so, but there are times when I really believe it's
25 true.

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1 So that's what I would do, Judge. I am delighted
2 that you are going to have a hearing to see about these
3 hearing aids. I am going tell all my colleagues to bring
4 motions before the judges here and have hearings, and let's
5 see what we can do because together we are powerful.

6 That's what I would do.

7 THE COURT: Thank you, Counsel.

8 Mr. Algor?

9 MR. ALGOR: I have nothing else, Your Honor.

10 THE COURT: All right. Well, we will see you this
11 Friday at 3 o'clock.

12 You will speak with your client?

13 MS. CARDI: I will, Judge. Thank you so much.

14 THE COURT: Oh, no, thank you. Just doing my job.

15 And, you know, on August 10th of this year my Late
16 Distinguished Colleague Judge Weinstein would have turned
17 100, and my law clerks have heard this story numerous times,
18 but I will tell it to you in the theory that, perhaps, you
19 have not heard it, or even if you have, you have to pretend
20 you have not heard it. My late father was a rising
21 executive in the Social Security Administration at the time,
22 he was later moved on to higher heights than Social
23 Security, and he did not like lawyers very much because
24 lawyers were the ones who would always tell him what he
25 could not do as a business type.

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1 So we had just moved from the public housing
2 projects in Harlem where I grew up, Colonial Park Projects
3 in Harlem in 1967. And my father came home from work one
4 day and he said, You know, Billy, I don't like lawyers much,
5 but it's okay if you became a lawyer. And I said, Well,
6 thanks Dad. It was something I was thinking about maybe
7 doing when I grew up, but, Why the change of heart? He
8 says, Well, he says, I was in court today as a fact witness.
9 Someone was trying to swindle Social Security, and I had to
10 give some testimony about the documents that were submitted
11 to the agency, and there was this newly appointed judge. He
12 says, You Know, I'm just a middle-management guy, black guy
13 who just moved from the projects to a little house in
14 Queens Village with his wife and young kids. But this
15 judge, this newly appointed judge treated me with such
16 respect and such dignity, and he treated everyone in the
17 courtroom, the lawyers, the witnesses, the CFO's, everybody,
18 with such respect that it inspired me, and it's okay if you
19 become a lawyer when you grow up.

20 That newly appointed judge was Jack Weinstein.

21 I told that story when I was sworn in as a judge
22 ten years ago this October, and it is the only time I saw
23 Jack Weinstein have tears in his eyes, because it was a
24 plain-vanilla, straightforward case that resonated through
25 the ages and allowed me to go to law school and become one

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1 of Judge Weinstein's colleagues.

2 So we are going to have a conference on Friday,
3 and it may be as a result of certain filings and
4 applications from Ms. Cardi that I just might have to
5 channel the Late, Great Judge Weinstein, and it may be that
6 I will have to arrange, as he did periodically, site visits
7 to places that were relevant to his cases.

8 I am just saying, I did not take this job to allow
9 injustices to be done to anybody, and I am not going to sit
10 here with people that I have denied applications for bail or
11 bond and the Circuit has affirmed those because of their
12 criminal histories, and indeed, their behaviors, and indeed,
13 they may be pleading guilty in future cases, but I am not
14 going to tolerate them being abused in prison. And I am not
15 going to sit here a few blocks away and not say, Let me see
16 where you are putting the people, that at the request of
17 the Government, I am ordering to stay in. Maybe I cannot
18 tell the BOP how to clean toilets, but I can say what
19 conditions are no longer acceptable in my one-case-at-a-time
20 determination of cases.

21 So since I know based on publicly filed decisions
22 by my brother and sister judges here in the
23 Eastern District, they also believe that defendants have to
24 be treated decently. If I ran the BOP, I might want to
25 clean house before the Spirit of Jack Weinstein has little

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1 Billy Kuntz's visits to their house.

2 Is that clear?

3 MR. ALGOR: Yes, Your Honor.

4 MS. CARDI: Yes, Your Honor.

5 THE COURT: Feel free to let them know.

6 MS. CARDI: Yes, Your Honor.

7 THE COURT: They do not have to worry about
8 Judge Kuntz, okay? But they had better be concerned about
9 the Spirit of Judge Weinstein.

10 All right. We are adjourned. See you folks.

11 MR. ALGOR: Thank you, Your Honor.

12 MS. CARDI: Thank you, Your Honor.

13 THE COURTROOM DEPUTY: All rise.

14 THE COURT: Thank you.

15 Stay safe, everybody.

16 (Matter concluded.)

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23 *I (we) certify that the foregoing is a correct transcript*
24 *from the record of proceedings in the above-entitled matter.*

25 /s/ David R. Roy
DAVID R. ROY

28th day of July, 2021
Date